

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail Contract 442 (MC2018-166)
Negotiated Service Agreement

Docket No. CP2018-238

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO
UNITED STATES POSTAL SERVICE REQUEST TO ADD
PRIORITY MAIL CONTRACT 442 TO THE COMPETITIVE PRODUCTS LIST

(June 19, 2018)

I. Introduction

The Public Representative hereby provides comments pursuant to Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings.¹ In that Notice, the Commission established the above-referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Contract 442 to the Competitive product list).²

The Postal Service states that the proposed product is a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3). Request, 1. The Postal Service also maintains that the prices and classification underlying the instant

¹ Docket No. CP2018-238, Notice Initiating Docket(s) For Recent Postal Service Negotiated Service Agreement Filings, June 11, 2018.

² Postal Service Request to Add Priority Mail Contract 442 to Competitive Product List and Notice of Filing Materials under Seal (Request), June 8, 2018. The Postal Service Request contained the following attachments: Attachment A – a redacted version of Governors' Decision No. 11-6; Attachment B – a redacted version of the instant contract; Attachment C – the requested changes in the product list with the additions underlined; Attachment D – a statement of supporting justification for the request; Attachment E – the certification of compliance with 39 U.S.C. 3633(a)(1) and (3); and Attachment F – an application for nonpublic treatment of the materials filed under seal and a request for permanent confidentiality of customer identifying information.

contract are supported by Governors' Decision No. 11-6. The Postal Service further maintains that the Statement of Supporting Justification provides support for adding Priority Mail Contract 442 to the competitive product list and the contract is in compliance with 39 U.S.C. § 3633(a). Attachment A, 2.

The contract's effective date will be set two (2) business days following the date on which the Commission issues all necessary regulatory approval. Attachment B, 5. The contract is set to expire three (3) years from the effective date, unless 1) terminated by either Party within 30 days' notice with applicable restrictions, (2) renewed by mutual agreement in writing, (3) superseded by a subsequent Agreement between the Parties, (4) ordered by the Commission or a court, or (5) required to comply with subsequently enacted legislation. Id.

II. Comments

A. Introduction

The Public Representative has reviewed the Postal Service's Request, the Statement of Supporting Justification, as well as the instant contract and the financial data filed under seal with the Postal Service's Request. Based upon that review, the Public Representative concludes that Priority Mail Contract No. 442 should be classified as a competitive product and added to the competitive product list. In addition, it appears that this Contract should generate sufficient revenues to cover costs during the first year and thereby satisfy 39 U.S.C. § 3633(a).

B. Requirements 39 U.S.C. § 3642 (Product List Assignment).

Pursuant to 39 U.S.C. § 3642 the Postal Service requests that Priority Mail Contract 442 be added to the competitive product list. 39 U.S.C. § 3642 requires the

Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive. The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D, 2. Based upon these assertions, the Public Representative concludes that the Postal Service’s Request to add Priority Mail 442 to the competitive product list is appropriate.

C. Requirements of 39 U.S.C. § 3633(a)

The Postal Service’s competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial data, the negotiated prices for Priority Mail Contract 442 should generate sufficient revenues to cover costs during the first year of the contract and therefore meet the requirements of 39 U.S.C. § 3633(a).

Although the contract is expected to remain in effect for a period of three years, the Postal Service does not provide data to demonstrate the contract’s compliance with the requirements of 39 U.S.C. § 3633(a) during the second and third years of the contract. This concern is largely mitigated by the fact that the terms of the contract provide a formula for an annual adjustment in the contract prices that should permit revenues to cover costs during years two and three. In addition, the Commission

has an opportunity to conduct an annual compliance review in its Annual Compliance Determination.

III. Conclusion

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

Respectfully submitted,

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